

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 19, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 197, HB 245, HB 40, HB 243,
1/11/2005
Executive Action: HB 66-Do Pass As Amended, HB 49-Do
Pass As Amended, HB 169-Do Pass As

Amended, HB 191-Do Pass As Amended,
HB 113-Do Pass As Amended, HB 110-
Do Pass As Amended, HB 23-Tabled

HEARING ON HB 197

REP. JOEY JAYNE, HD 15, ARLEE

Opening Statement by Sponsor:

REP. JOEY JAYNE (D), HD 15, opened the hearing on **HB 197,** Increase elder abuse penalties. She stated this bill is at the request of DPHHS.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 88}

Proponents' Testimony:

Rick Bartos, Department of Public Health and Human Services, Director-Adult Protective Services, rose in strong support of HB 197. **Mr. Bartos** stated the department has approximately 2,600 referrals of abuse and neglect of the elderly, senior citizens and developmentally disabled every year. Of the 2,600, more than 1,600 referrals relate to the elderly. Typically the victim is a woman, who is more than 80 years old and has no family or family support.

Mr. Bartos further related stories of abuse and neglect by family members and assisted living care facilities.

{Tape: 1; Side: A; Approx. Time Counter: 88 - 216}

Leo Gallagher, Lewis and Clark County Attorney, rose in support of HB 197. He informed the committee members that cases of elder abuse are hard to prosecute. **Mr. Gallagher** stated that what this bill will do is "marry" some of the penalties and terminology found in Title 45 and Title 52. He explained the differences in the penalties for the same offenses perpetrated against a minor versus an elderly person.

Mr. Gallagher continued to speak to the committee about the specificities in Title 52 regarding sexual abuse. This is in reference to the offender only being charged with a misdemeanor which is the current language. He implored the committee to correct this problem.

{Tape: 1; Side: A; Approx. Time Counter: 216 - 271}

Tylynn Gordon, State of Montana, Auditor's Office, rose in support of HB 197. She stated that this bill strengthens the penalties available for prosecution for "...who abuse and neglect our elder population."

{Tape: 1; Side: A; Approx. Time Counter: 271 - 304}

Rose Hughes, Montana Health Care Association, rose in support of HB 197. **Ms. Hughes** stated to the committee members that her association sees the situation from both sides. The nursing home where the elderly may be placed; employees could be abusing the elderly, then there is usually no follow-up with the law, and then those former employees go on to other nursing homes without their names being added to the Nurse Aide Registry.

{Tape: 1; Side: A; Approx. Time Counter: 304 - 372}

Betty Beverly, Montana Senior Citizens Association, rose in support of HB 197.

{Tape: 1; Side: A; Approx. Time Counter: 372 - 392}

Beth Brenneman, Montana Advocacy Program, rose in support of HB 197. **Ms. Brenneman** spoke of a possible amendment to "...clearly encompass the offenses intended, and avoid the real possibility of a felony prosecution of a person with a developmental disability for a conflict with another resident."

[**EXHIBIT**](#) (juh14a01)

{Tape: 1; Side: A; Approx. Time Counter: 392 - 467}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. RICE asked numerous questions of Mr. Bartos regarding the story that he had told to the committee regarding the elderly lady that lived in the Assisted Living Facility. **REP. RICE** was concerned about the number of other residents that would have been involved, if financial problems within the facility were driving the problems and whether the facility had been inspected on a regular basis. **Mr. Bartos** stated that four or five other residents had been similarly abused, there was not enough staff, the director had been dismissed and the license for the facility revoked.

REP. CLARK inquired of Mr. Gallagher if verbal abuse would apply in reference to this bill. **Mr. Gallagher** responded that verbal abuse would not apply.

REP. EVERETT continued with a question for Mr. Bartos. These questions were about the 2000-plus cases of elder abuse, the probability of felony charges filed and the discretion of the county attorney.

Mr. Bartos did indicate that it is at the discretion of the individual county attorney of each county whether or not to prosecute.

REP. EVERETT posed a last question to Mr. Bartos regarding the definition of neglect. **Mr. Bartos** referred to Title 52 and the handout for the answer.

EXHIBIT(juh14a02)

{Tape: 1; Side: A; Approx. Time Counter: 467 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 95}

Closing by Sponsor:

REP. JAYNE closed the hearing on HB 197.

{Tape: 1; Side: B; Approx. Time Counter: 95 - 121}

HEARING ON HB 245

REP. GARY MACLAREN, HD 89, VICTOR

Opening Statement by Sponsor:

REP. GARY MACLAREN (R), HD 89, opened the hearing on **HB 245**, Require parental consent for minor body piercing.

{Tape: 1; Side: B; Approx. Time Counter: 121 - 143}

Proponents' Testimony:

Gilda Clancy, Montana Eagle Forum, rose in support of HB 245.

{Tape: 1; Side: B; Approx. Time Counter: 143 - 163}

Dallas Erickson, Montana Family Coalition, rose in support of HB 245.

{Tape: 1; Side: B; Approx. Time Counter: 163 - 169}

Harris Himes, rose in support of HB 245.

{Tape: 1; Side: B; Approx. Time Counter: 169 - 173}

Jacque Trude, self, rose in support of HB 245.

{Tape: 1; Side: B; Approx. Time Counter: 173 - 176}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. CLARK inquired of the sponsor to explain how "foreign" or outside of the ear piercing could be included in this bill.

REP. MCLAREN said that he would acknowledge that the language regarding outside of the ear piercings should be in HB 245 but he didn't know how to differentiate that from other areas.

REP. WARD then asked the sponsor whether or not tattoos could be used in the same language. **REP. LANGE** then had a follow-up question to **REP. MCLAREN** regarding the age requirement. **REP. MCLAREN** replied that his intent would be for 21 years old however, he would be amenable to 18 years old for this bill.
{Tape: 1; Side: B; Approx. Time Counter: 176 - 241}

Closing by Sponsor:

REP. MCLAREN closed the hearing on HB 245.
{Tape: 1; Side: B; Approx. Time Counter: 241 - 253}

HEARING ON HB 40

REP. CHRISTOPHER HARRIS, HD 66, BOZEMAN

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, opened the hearing on **HB 40**, Expand coverage of civil and criminal false claims against the state. **REP. HARRIS** stated to the committee he brought this bill at the request of the Department of Justice.
{Tape: 1; Side: B; Approx. Time Counter: 253 - 313}

Proponents' Testimony:

Ali Bovington, Assistant Attorney General, rose in support of HB 40. **Ms. Bovington** was able to explain to the committee members how the drug companies are able to overstate their prices which then lead to inflated wholesale prices which results in the consumer paying more.

[**EXHIBIT\(juh14a03\)**](#)

{Tape: 1; Side: B; Approx. Time Counter: 313 - 418}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MCGILLVRAY inquired of **Ms. Bovington** if this bill has any relationship or conflicting language in reference to HB 146 that **REP. GALLIK** has introduced. **Ms. Bovington** responded that if both bills passed; the two bills would be coordinated.

REP. STOKER continued the questioning of Ms. Bovington. He was interested in the free samples that drug companies distribute and if they are used as part of the pricing. **Ms. Bovington** explained how they are in fact used.

REP. NOENNIG then started his questioning of Ms. Bovington. He was interested in the contracts and if they would fit the Federal statute for false claims.

REP. LANGE questioned the sponsor as to the effect of the pricing to consumers.

{Tape: 1; Side: B; Approx. Time Counter: 418 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 57}

Closing by Sponsor:

REP. HARRIS closed the hearing on HB 40.

{Tape: 2; Side: A; Approx. Time Counter: 57 - 67}

HEARING ON HB 243

REP. CAROL LAMBERT, HD 39, BROADUS

Opening Statement by Sponsor:

REP. CAROL LAMBERT (R), HD 39, opened the hearing on **HB 243**, Revise reimbursement of counties for detention costs. **REP. LAMBERT** informed the committee members that this is a "Farmer's Bill" and was heard in the 2003 Legislative Session; however, it disappeared into the "Black Hole."

REP. LAMBERT stated to the committee members that she would be amenable to an amendment making the date effective as of January 1, 2005 so as not to lose three or four months of reimbursement to the counties.

[**EXHIBIT\(juh14a04\)**](#)

[**EXHIBIT\(juh14a05\)**](#)

[**EXHIBIT\(juh14a06\)**](#)

[**EXHIBIT\(juh14a07\)**](#)

{Tape: 2; Side: A; Approx. Time Counter: 67 - 162}

Proponents' Testimony:

Linda Stoll, Missoula County, rose in support of HB 243. She reported to the committee that when Fish, Wildlife and Parks arrests someone, FWP pays for the incarceration; when Montana Highway Patrol arrests someone, DOJ pays for the incarceration; and when Department of Corrections arrests for a parole violation the DOC pays. The question then arises, why this should be any different for a parole violation. DOC initiates the parole action, just as they do for the parole violators.

Ms. Stoll suggested to the committee that this is a tax shift to local taxpayers and an unfair burden for local counties to pay these costs.

{Tape: 2; Side: A; Approx. Time Counter: 162 - 181}

Jim Smith, Montana Sheriffs and Peace Officers Association, rose in support of HB 243. **Mr. Smith** stated to the committee members that in any county, the biggest part of the counties' budget is the Sheriff's Office. And within that Sheriff's Department the biggest part of that budget is the cost related to running the detention center.

He further stated that there can be a great lapse of time between the arrest, the acceptance of a verdict or plea and finally the pronouncement of the sentence. This is about fairness.

{Tape: 2; Side: A; Approx. Time Counter: 191 - 230}

Harold Blattie, Montana Association of Counties, rose in strong support of HB 243. He stated to committee members that his organization adopted a resolution in 2000 about this issue. The Attorney General's Office adopted a similar resolution in 2001 that the Department of Corrections would, after "an oral pronouncement" of sentence, pay for the incarceration of offenders. The DOC had taken the position that the costs to them would start after the "written pronouncement" of the sentence. Therein, lies the problem.

Mr. Blattie informed the committee that Charles Brooks from Yellowstone County also supports HB 243.

{Tape: 2; Side: A; Approx. Time Counter: 230 - 276}

Opponents' Testimony: None

Informational Testimony:

Joe Williams, Department of Correction, informed the committee members that when there is a probation violation, the jurisdiction stays with the District Court judge and with that County Attorney. When there is a violation of the parole agreement, that is a function of the State with the Parole Board; therefore, the State has control.

{Tape: 2; Side: A; Approx. Time Counter: 276 - 292}

Questions from Committee Members and Responses:

REP. KOOPMAN inquired of the sponsor that if the county is incurring greater costs to incarcerate these offenders, why don't those counties try harder to get the offenders out of their jails. **REP. LAMBERT** replied, "...the counties have no control over when the offenders may be released; therefore, they have no control at the present time over the costs they are incurring."

REP. WINDHAM discussed the Fiscal Note with **REP. LAMBERT**. **REP. WARD** asked Mr. Williams to explain the difference between probation and parole and if those terms are interchangeable.

{Tape: 2; Side: A; Approx. Time Counter: 292 - 458}

Closing by Sponsor:

REP. LAMBERT closed the hearing on HB 243

{Tape: 2; Side: A; Approx. Time Counter: 458 - 500}

EXECUTIVE ACTION ON HB 23

Motion/Vote: **REP. PARKER** moved that HB 23 BE TABLED. Motion carried unanimously by voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 23}

During the break, **Mr. MacMaster** explained the procedure on how to request an amendment.

{Tape: 2; Side: B; Approx. Time Counter: 23 - 34}

EXECUTIVE ACTION ON HB 49

Motion: REP. CLARK moved that HB 49 DO PASS.

Discussion:

Motion: REP. WILSON moved that HB 49 BE AMENDED with 49-02.
[EXHIBIT\(juh14a08\)](#)

Discussion:

Mr. MacMaster explained the amendment. The majority of the committee weighed in on the Amendment 49-02 with variations to that amendment but none were added to change the significance of the amendment.

Vote: Motion carried unanimously by roll call vote.

Motion: REP. CLARK moved that HB 49 BE AMENDED with a Conceptual Amendment. Motion carried unanimously by voice vote.

Motion: REP. CLARK moved that HB 49 DO PASS AS AMENDED.

Discussion:

Motion: REP. KOOPMAN moved that HB 49 BE AMENDED with 49-01.
[EXHIBIT\(juh14a09\)](#)

Discussion:

The discussion centered around the registration of sex offenders in Montana.

Vote: Motion failed 2-16 with REPS. KOOPMAN and WARD voting aye by roll call vote.

Motion/Vote: REP. WILSON moved that HB 49 DO PASS AS AMENDED.
Motion carried unanimously by roll call vote.

{Tape: 2; Side: B; Approx. Time Counter: 34 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 100}

EXECUTIVE ACTION ON HB 66

Motion: REP. MCGILLVRAY moved that HB 66 DO PASS.

Discussion:

Motion: REP. PARKER moved that HB 66 BE AMENDED with amendment 66-01.

Discussion:

This amendment was handed out at the time of the hearing. **Mr. MacMaster** explained the amendment again.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. PARKER moved that HB 66 DO PASS AS AMENDED. Motion carried unanimously by roll call vote.

{Tape: 3; Side: A; Approx. Time Counter: 100 - 249}

EXECUTIVE ACTION ON HB 110

Motion: REP. CLARK moved that HB 110 DO PASS.

Discussion:

Motion: REP. NOENNIG moved that HB 110 BE AMENDED with amendment 110-01.

[EXHIBIT](#)(juh14a10)

Discussion:

Mr. MacMaster explained the amendment.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. NOENNIG moved that HB 110 DO PASS AS AMENDED. Motion carried unanimously by roll call vote.

{Tape: 3; Side: A; Approx. Time Counter: 249 - 413}

EXECUTIVE ACTION ON HB 113

Motion: REP. PARKER moved that HB 113 DO PASS.

Discussion:

Motion/Vote: REP. PARKER moved that HB 113 BE AMENDED with 113-02. Motion carried unanimously by voice vote.

[EXHIBIT](#)(juh14a11)

Motion: REP. PARKER moved that HB 113 DO PASS AS AMENDED.

Discussion:

Motion: REP. KOOPMAN moved that HB 113 BE AMENDED with 113-01.

[EXHIBIT](#)(juh14a12)

Discussion:

The committee members discussed this amendment as to the length of time that offenders must register and to the fingerprint issue.

Vote: Motion failed 2-16 with REPS. KOOPMAN and RICE voting aye by voice vote.

Motion/Vote: REP. HARRIS moved that HB 113 DO PASS AS AMENDED.

Motion carried 12-6 by roll call vote with REPS. CLARK, EVERETT, KOOPMAN, RICE, SONJU, and WARD voting no.

{Tape: 3; Side: A; Approx. Time Counter: 413 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 85 - 179}

EXECUTIVE ACTION ON HB 146

Mr. MacMaster explained to the committee that HB 146 and HB 40 do not need to be coordinated. After learning that, the committee members decided to terminate the Executive Action Motion on HB 146.

{Tape: 3; Side: B; Approx. Time Counter: 179 - 277}

EXECUTIVE ACTION ON HB 169

Motion: REP. GUTSCHE moved that HB 169 DO PASS.

Discussion:

Motion: REP. NOENNIG moved that HB 169 BE AMENDED with 169-01.
[EXHIBIT](#)(juh14a13)

Discussion:

Mr. MacMaster explained the amendment.

Vote: Motion HB 169 BE AMENDED carried unanimously by voice vote.

Motion/Vote: REP. NOENNIG moved that HB 169 DO PASS AS AMENDED.
Motion carried 16-2 by voice vote with REPS. KOOPMAN and RICE
voting no.
{Tape: 3; Side: B; Approx. Time Counter: 277 - 393}

EXECUTIVE ACTION ON HB 191

Motion: REP. BECKER moved that HB 191 DO PASS AS AMENDED.

Discussion:

Motion: REP. BECKER moved that HB 191 BE AMENDED with 191-01.
[EXHIBIT](#)(juh14a14)

Discussion:

The Representatives discussed this bill as due to the burden that testifying may place on a marriage, the common law statutes and lack thereof and to the time frame involved in such marriages.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. BECKER moved that HB 191 DO PASS AS AMENDED.
Motion carried 17-1 by voice vote with REP. MCGILLVRAY voting no.
{Tape: 3; Side: B; Approx. Time Counter: 393 - 500}
{Tape: 4; Side: A; Approx. Time Counter: 0 - 35}

ADJOURNMENT

Adjournment: 11:58 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh14aad0.TIF](#))